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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 11th September, 2019

+ **CM (M) 1337/2019**

M/S BANWARI LAL CHARITABLE
TRUST & ANR.

..... Petitioners

Through: Mr. Siddharth Sharma and Mr. Ambuj
Tiwari, Advocates. (M:8954594279)

versus

VIRESHWAR PRASAD JAIN & ANR.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 40402/2019 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 1337/2019 & CM APPL. 40403/2019 (stay)

2. The Petitioners/Judgment Debtors (*hereinafter* 'Judgment Debtors') are aggrieved by the order dated 3rd May, 2019 passed by Sh. Arun Sukhija, ADJ-07 (Central), Tis Hazari Courts, Delhi, by which the objections filed by them to the execution of the settlement decree were dismissed.

3. Briefly stated, the parties entered into a settlement dated 17th September, 2007 in respect of properties bearing Nos.1/15 to 1/17, Rani Jhansi Road, New Delhi ('*suit properties*'). There were several obligations agreed to by the parties as per the settlement. Two clauses of the settlement i.e., clauses 6 & 7 are in contention. The contention of the Judgment Debtors is that since the Respondents/Decree Holders (*hereinafter* 'Decree Holders') did not comply with their obligation under clause 6, the Judgment Debtors

are no longer obligated to comply with clause 7.

4. The Executing Court, after considering the two clauses, has held that the various obligations under clauses 6 & 7 are independent of each other and clause 7 has certain pre-conditions, which have been complied with by the Decree Holders. In fact, the Executing Court notes that under clause 9, the Judgment Debtor was required to withdraw the suit for permanent and mandatory injunction after the removal of the lawn by the Decree Holders, as referred to in clause 6. The Executing Court observes that it is not the case of the Judgment Debtors that the suit has not been withdrawn due to the Decree Holders' failure to remove the lawn. Accordingly, the objections have been dismissed by observing that if the Judgment Debtors have any grievances remaining in respect of the obligations under clause 6, they can avail their remedies, however, they cannot escape their obligation to ratify the General Power of Attorney dated 9th April, 1979 (*hereinafter 'GPA'*) and sale deed dated 30th September, 1995. The relevant portion of the impugned order is as under:

“The clause no. 6 is totally independent and for the enforcement of clause no. 7, there was no requirement of fulfilment of clause no. 6. Moreover, there is no dispute between the parties that the agreement dated 18/3/2009 was executed between the parties. In this case, this court is not looking into the fact that whether the said agreement is voidable or not but there is no dispute that the said agreement was executed between the parties and as per the said agreement, the judgment debtors appears to have waived their rights in the clause no. 6 of the Settlement dated 17/09/2007. Moreover, it is also worthwhile to note that in terms of Clause no. 9 of Agreement dated 17/09/2007, the judgment debtor no.1 was required to withdraw the

another suit for permanent & mandatory injunction, which was pending in the Court of Ms. Kiran Gupta, the then Ld. Civil Judge, Delhi after the removal of lawn (referred to in Clause no. 6) by the decree holders. It is not the case of the judgment debtors that the said suit has not been withdrawn as the defendants have not removed the lawn.

The judgment debtors/ objectors can take their separate remedies under the law for non-compliance, if any, of Clause no. 6 of the Settlement dated 17/09/2007 but on the shoulder of the Clause no. 6, the judgment debtors cannot be allowed to stall the proceedings of the present case. The Clause No. 6 is totally an independent Clause and at the cost of repetition, it is reiterated that the decree holders have already complied all the terms & conditions for enforcement of Clause no. 7.

Considered from any view point, the objection filed by the judgment debtors is devoid of any merits and the same is hereby dismissed.”

5. Ld. counsel for the Judgment Debtors has vehemently contended that the Executing Court has failed to appreciate that all the obligations need to be complied with and that if the obligations under clause 6 are not complied with, the Judgment Debtors are not liable to execute the sale deed and the GPA under clause 7. He relies upon the judgment of the Hon'ble Supreme Court in ***Latim Lifestyle & Resorts Ltd. & Anr. v. Saj Hotels (P) Ltd. & Ors., (2003) 10 SCC 189*** to argue that corresponding reciprocal obligations, if any, need to be fulfilled.

6. A perusal of the said judgment, in fact, goes to show that in a compromise decree, none of the promises are interdependent and each of the obligations is separate and independent of each other, which is exactly what the Executing Court has held. The relevant portion of the Supreme Court

judgment is set out herein below:

“9. ...

In our opinion, it would suffice to state that the obligations incurred by the parties under the compromise decree cannot be termed “reciprocal compromises”, interdependent on each other for performance. All the obligations incurred by the parties under the compromise decree are independent obligations and each party must perform its own obligations directed towards fulfilment and consequent discharge and satisfaction of the decree. To the extent to which any controversy survives for adjudication, the same can be taken care of by the executing court which can still compel fulfilment of obligations respectively to the extent to which either party is obliged to do but has failed in discharging the same. The executing court may issue the necessary process, appoint a Commissioner or direct detention in civil imprisonment of the party found in breach and thus execute the decree.

...

13. Having heard the learned counsel for the parties and having noted their respective contentions we are of the opinion that the adjudication as to the several controversies raised between the parties should be left to the executing court which is still seized of them and we do not deem it proper if any final opinion thereon is expressed either by the High Court or by this Court since it would be premature to do so. It is therefore directed as under:

(1) The executing court shall secure compliance with the obligations spelled out by the compromise decree on each of the parties and none of the parties shall be entitled to contend that the obligations are reciprocal promises and one party cannot be compelled to discharge its obligations unless the other party has discharged its obligations. ...”

7. The legal position is, thus, clear that the obligations of each of the parties are independent of each other and not inter-dependent on each other. For the reasons stated hereinabove, the impugned order does not warrant any interference. However, the liberty given to the Judgment Debtors to avail of their remedies with respect to clause 6, if there is any non-compliance, is left open, as stated in the impugned order.

8. The petition and pending application are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 11, 2019/dk